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CBP headquarters or at a CBP training location.

(d) Regardless of the percentage limits set under this section, assignments of regular tours of duty to individual agents must be made consistent with the requirement to ensure pay assignment continuity under § 550.1615.

§ 550.1615 Pay assignment continuity.

(a) *Plan.* (1) In consultation with OPM, CBP must develop and implement a plan to ensure, to the greatest extent practicable, that the assignment of a regular tour of duty to an agent during all consecutive 3-year periods within the control period specified in paragraph (b) of this section produces an average overtime supplement percentage (during each 3-year period) that is consistent with the agent's average overtime supplement percentage during the course of the agent's career prior to the beginning of that control period, subject to paragraph (c) of this section. The purpose of this plan is to protect the retirement fund and ensure that agents are not able to artificially enhance their retirement annuities during the period when the high-3 average pay may be determined (in accordance with 5 U.S.C. 8331(4) or 5 U.S.C. 8401(3)).

(2) In applying paragraph (a)(1) of this section, the career average overtime supplement percentage for an agent is the greater of—

(i) The average of overtime supplement percentages (25 percent, 12.5 percent, or 0 percent) assigned during service as an agent on or after January 10, 2016, that is prior to the beginning of the agent's control period (as specified in paragraph (b) of this section); or

(ii) The average of the overtime supplement percentages during all service as an agent that is prior to the beginning of the agent's control period (as specified in paragraph (b) of this section), with assigned overtime supplement percentages (25, 12.5, or 0 percent) assigned during service on or after January 10, 2016, and with assigned percentages of administratively uncontrollable overtime under 5 U.S.C. 5545(c)(2) treated as overtime supplement percentages for any period of service prior to January 10, 2016.

(3) In applying paragraph (a)(2) of this section, the assigned overtime supplement percentage is used regardless of whether or not the payable amount of the overtime supplement is limited by a premium pay cap.

(4) In applying paragraph (a)(2) of this section, if an agent's control period begins on January 10, 2016, as provided in paragraph (b), the agent's initially assigned overtime supplement percentage must be considered the agent's career average under paragraph (a)(2)(i).

(b) *Control period.* The period of time during which CBP must control an agent's assignment to a regular tour of duty (*i.e.*, the control period) begins on the date 3 years before the agent meets age and service requirements for an immediate retirement and remains in effect during all subsequent service in a Border Patrol agent position. If, as of January 10, 2016, the date that is 3 years before the agent first met age and service requirements for an immediate retirement has already passed, then the agent's control period is considered to have begun on January 10, 2016.

(c) *Consistency requirement.* (1) The consistency requirement in paragraph (a) of this section is considered to be met when the agent's average overtime supplement percentage during all consecutive 3-year periods within the control period specified in paragraph (b) of this section is within 2.5 percentage points of the agent's average overtime supplement percentage during the course of the agent's career prior to the beginning of that control period, except as provided in paragraph (c)(2) of this section.

(2) Notwithstanding the consistency requirement in paragraph (a) of this section, the CBP plan may allow an agent to be assigned a regular tour of duty that provides an overtime supplement percentage that is less than that necessary to produce an average percentage (during all consecutive 3-year periods within the control period specified in paragraph (b)) that is consistent with the agent's career average percentage if—

(i) The agent's overtime supplement is limited by the premium pay cap under §§ 550.105 and 550.107 and the

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agent voluntarily elects a regular tour of duty providing such a lesser overtime supplement percentage that is approved by CBP; or

(ii) CBP determines an agent is unable to perform overtime on a daily basis due to a physical or medical condition affecting the agent and assigns the agent a Basic regular tour of duty, as described in §550.1611(f)(2), (but only if such assignment makes it impossible to satisfy the consistency requirement during any given consecutive 3-year period).

(d) *CBP authority.* (1) CBP may take such action as is necessary, including the unilateral assignment of a regular tour of duty to implement the plan described in paragraph (a) of this section, notwithstanding any other provision of law or this subpart, except as provided in paragraph (d)(2) of this section.

(2) Notwithstanding the requirements of 5 U.S.C. 5550(b)(1)(G) and this section, CBP is authorized to assign agents to regular tours of duty as necessary to meet operational requirements. Before exercising the authority to allow assignment of a regular tour of duty that does not comply with the plan described in paragraph (a) of this section, CBP must first determine that it cannot adequately address the specific operational requirements in question by other means, such as the assignment of overtime work outside the regular tour of duty to the affected agent or other agents. If this authority is exercised, CBP must return an affected agent to a regular tour of duty that complies with the plan described in paragraph (a) of this section as soon as possible.

(e) *Reporting requirements—(1) Annual data reporting for agents within their control period.* For each agent within the control period specified in paragraph (b) of this section, CBP must provide to OPM no later than March 30th of each year the following information (in a format specified by OPM) based on data compiled through the end of the most recent annual period:

(i) The date the agent became subject to controls on the assignment to a regular tour of duty;

(ii) The date the agent will become subject to mandatory separation under 5 U.S.C. 8335(b) or 5 U.S.C. 8425(b);

(iii) The service computation date based on eligibility under 5 U.S.C. 8336(c) or 5 U.S.C. 8412(d);

(iv) The average overtime supplement percentage during the course of the agent's career prior to the beginning of the control period specified in paragraph (b);

(v) The average overtime supplement percentage for the time period beginning with the date the agent became subject to controls on the assignment to a regular tour of duty and ending on the last day of the most recent annual period;

(vi) The average overtime supplement percentage for the last three annual periods (excluding any time that was not within a control period specified in paragraph (b) of this section);

(vii) The average overtime supplement percentage for the most recent annual period (excluding any time that was not within a control period specified in paragraph (b) of this section), and;

(viii) Any other information requested by OPM.

(2) *Annual data reporting for all agents.* No later than March 30th of each year, CBP must provide to OPM the following information (in a format specified by OPM) for each agent compiled for the preceding calendar year based on salary payments made during that year:

(i) The amount of earnings subject to retirement deductions, including overtime supplement payments, received during the most recent calendar year;

(ii) The amount of earnings subject to retirement deductions during the most recent calendar year minus the total amount of the overtime supplement payments during that year;

(iii) The service computation date computed as though law enforcement officer service is regular employee service (*i.e.*, the “regular” SCD);

(iv) The service computation date computed with credit for law enforcement officer service, and any other service creditable for eligibility under 5 U.S.C. 8336(c) or 5 U.S.C. 8412(d) (*i.e.*, the “LEO” SCD);

(v) Date of birth;

(vi) Gender;

(vii) Retirement system (*e.g.*, CSRS, FERS, FERS-RAE, FERS-FRAE); and

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(viii) Any other information requested by OPM.

(3) *Additional data.* CBP must provide additional data as requested by OPM at any time, including data on the percentage rate of administratively uncontrollable overtime under § 550.154 during the period before the annual period that begins in January 2016.

(f) *Corrective actions.* If it is determined that the consistency requirement described in paragraphs (a) and (c) of this section is not being met for a particular agent, CBP must document why the differential occurred and establish any necessary actions, including the modification of the plan described in paragraph (a) of this section, to ensure that the goal of pay assignment continuity is achieved going forward. Consistent with § 550.1616(b), CBP is not required to retroactively correct an agent's assigned tour or overtime supplement based on violation of the consistency requirement, except when CBP determines there exists, in connection with an agent's assigned overtime supplement, evidence of fraud, misrepresentation, fault, or lack of good faith on the part of that agent.

§ 550.1616 Corrective actions.

(a) Except as provided in paragraph (b) of this section, an error made in connection with the assignment of an agent's regular tour of duty (including any associated overtime supplement) must be corrected as soon as possible.

(b) A retroactive correction of a tour assignment (*i.e.*, actual assigned work schedule as opposed to an error in the payroll system) may not be made in the following circumstances, unless CBP determines there exists, in connection with an agent's assigned tour, evidence of fraud, misrepresentation, fault, or lack of good faith on the part of the affected agent:

(1) Correction of an error in applying the consistency requirement described in §§ 550.1611(f)(5) and 550.1615; and

(2) Correction of an error that caused an employee to have a Level 1 regular tour of duty based solely on misapplication of the applicable percentage limitation described in §§ 550.1611(f)(4) and 550.1614.

TREATMENT OF OVERTIME WORK

§ 550.1621 Rules for types of regular tour of duty.

(a) *Level 1 regular tour of duty.* For an agent with a Level 1 regular tour of duty and a 25 percent overtime supplement, the following rules apply:

(1) The agent has an officially established weekly regular tour of duty generally consisting of five 10-hour workdays (an 8-hour basic workday and 2 regularly scheduled overtime hours);

(2) The agent's 8-hour basic workday (regular time) may be interrupted by an unpaid off-duty meal break;

(3) The obligation to perform 2 hours of overtime work on a day including part of the agent's regular tour of duty does not apply if the agent performs no work during regular time on that day, subject to paragraph (e) of this section;

(4) As compensation for regularly scheduled overtime hours within the regular tour of duty, the agent is entitled to an overtime supplement equal to 25 percent of the agent's hourly rate of basic pay times the number of paid hours of regular time for the agent in the pay period (subject to the premium cap in §§ 550.105 and 550.107 and the restriction in § 550.1626(a)(5)), and no additional compensation or compensatory time off may be provided for such overtime hours;

(5) For any additional regularly scheduled overtime hours outside the regular tour of duty, the agent is entitled to overtime pay as provided in § 550.1624, except as otherwise provided by § 550.1626;

(6) For any irregular overtime hours, the agent is entitled to be credited with compensatory time off as provided in § 550.1625, except as otherwise provided by § 550.1626;

(7) The agent must be charged corresponding amounts of paid leave, compensatory time off, other paid time off, or time in nonpay status for each hour (or part thereof) the agent is absent from duty during regular time, as provided in § 550.1634, except as otherwise provided in § 550.1626(a); and

(8) If the agent is absent during regularly scheduled overtime hours within the agent's regular tour of duty that the agent is obligated to work, the agent accrues an obligation to perform